

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DAVID WYNN MILLER, EDUARDO R.  
DIAO, and MARIA AIDA C. DIAO,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., PRLAP, INC,

Defendants.

Case No.: 12-CV-05585-LHK

ORDER TO SHOW CAUSE WHY CASE  
SHOULD NOT BE DISMISSED FOR  
FAILURE TO PROSECUTE

For the reasons stated herein, the Court ORDERS Plaintiffs David Wynn Miller, Eduardo R. Diao, and Maria Aida C. Diao (“Plaintiffs”) to Show Cause why this Case Should Not Be Dismissed for Failure to Prosecute.

Plaintiffs have not been diligent in serving the Defendants in this case. Plaintiffs filed their complaint on October 31, 2012. *See* ECF No. 1. However, plaintiffs have failed to submit any documentation demonstrating that they have properly served Defendants. Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, “[i]f a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m).

1 In addition, Plaintiffs have failed to comply with the Court's requirements regarding Case  
2 Management Conferences. On January 28, 2013, the Court set a Case Management Conference for  
3 March 27, 2013, and stated that the Case Management Statement was due by March 20, 2013. *See*  
4 ECF No. 6. Plaintiffs failed to file a timely joint case management statement in violation of Civil  
5 Local Rule 16-10 of the United States District Court for the Northern District of California.  
6 Plaintiffs also failed to appear at the Case Management Conference.

7 Thus, the Court hereby ORDERS Plaintiffs to Show Cause why this case should not be  
8 dismissed for failure to prosecute. Plaintiffs have until April 12, 2013, to file a response to this  
9 Order to Show Cause. A hearing on this Order to Show Cause is set for **Wednesday, April 17,**  
10 **2013, at 2:00 p.m.** Plaintiffs' failure to respond to this Order and to appear at the April 24, 2013  
11 hearing will result in dismissal without prejudice for failure to prosecute.

12 **IT IS SO ORDERED.**

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14 Dated: March 28, 2013

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16 LUCY H. KOH  
17 United States District Judge  
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